



2024:DHC:8860



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 14.11.2024+ **ARB.P. 1200/2024**

MONEYWISE FINANCIAL SERVICES PVT LTD.Petitioner

Through: Mr. Mehvish Khan, Mr. Aman
Choudhary, Advs.

versus

ANAND TYRES THROUGH ITS PROPRIETOR
SMT VEENU DEVINDER SINGH ANAND AND ANR.

.....Respondents

Through: Mr. Pulkit Thareja, Mr. Sumukh
Volimbe, Advs.**CORAM:**
HON'BLE MR. JUSTICE SACHIN DATTA**SACHIN DATTA, J. (Oral)**

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks appointment of a sole arbitrator to adjudicate the disputes between the parties. The disputes between the parties have arisen in the context of a Loan Agreement dated 17.01.2019 (hereinafter '*the Agreement*').

2. Clause 10.1 of the said Agreement contains an arbitration clause which is in following terms:



“10.1 Arbitration

Any disputes, differences, controversies and question directly or indirectly arising at any time hereafter between the Parties or their respective representatives or assigns, arising out of or in connection with this Agreement (or the subject matter of this Agreement), including, without limitation, any question regarding its existence, validity, interpretation, construction, performance, enforcement, rights and liabilities of the Parties, or termination (“Dispute”), shall be referred to a sole arbitrator duly appointed by the Lender. The language of the arbitration shall be English. The seat of arbitration shall be at New Delhi and the language of proceedings shall be English. The award rendered shall be in writing and shall set out the reasons for the arbitrator’s decision. The costs and expenses of the arbitration shall be borne equally by each Party, with each Party paying for its own fees and costs including attorney fees, except as may be determined by the arbitration tribunal. Any award by the arbitration tribunal shall be final and binding.”

3. The disputes between the parties have arisen on account of alleged non-payment by the respondent of its monetary dues/instalments under the Agreement. On 25.06.2024, the petitioner sent a notice under Section 21 of the A&C Act for invoking arbitration. No response thereto was submitted by the respondent.
4. Learned counsel for the respondent does not dispute the existence of the arbitration agreement, however, it is pointed out that both the respondents (borrower and co-borrower) have filed an insolvency petition under the Provincial Insolvency Act, 1920 which is pending before the Learned Civil Judge, Senior Division, Pune.
5. Learned counsel for the respondent concedes that there is no moratorium in place or any order, passed in the insolvency proceedings, which prevents the petitioner from pursuing the present petition.
6. In terms of ***SBI General Insurance Co. Ltd. v. Krish Spinning*** 2024 SCC OnLine 1754, the scope of examination in proceedings under section



11 A&C Act is confined to ascertaining existence of the arbitration agreement.

7. Since the existence of the arbitration agreement is evident from a perusal of the Agreement, there is no impediment to appointing an independent Sole Arbitrator to adjudicate the disputes between the parties as prayed for, and as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd* (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd*, (2017) 8 SCC 377, *Bharat Broadband Network Limited v. United Telecoms Limited.*, 2019 SCC OnLine SC 547 and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666 and *SBI General Insurance Co. Ltd. v. Krish Spinning* (supra).

8. In the circumstances, since there is no controversy as regards the existence of the arbitration agreement, there is no impediment to appointing a sole arbitrator to adjudicate the disputes between the parties.

9. Accordingly, Ms. Prity Sharma, Advocate (Mob. No. +91 9911028589) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

10. The respondent shall be at liberty to raise appropriate objections as regards jurisdiction/arbitrability, if any, before the learned sole arbitrator and for this purpose, move an application under Section 16 of the A&C Act, which shall be duly considered and decided by the learned sole arbitrator in accordance with law.

11. It is agreed by the parties that the arbitration shall be conducted under the aegis and rules of Delhi International Arbitration Centre (DIAC), and the



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payment of arbitrator's fees and arbitration cost, shall also be governed by the said rules. It is directed accordingly.

12. The present petition stands disposed of.

SACHIN DATTA, J

NOVEMBER 14, 2024/at

Signature Not Verified

Digitally Signed By:ROHIT
KUMAR PATEL
Signing Date:21.11.2024
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